

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
WACO DIVISION

WSOU INVESTMENTS, LLC D/B/A  
BRAZOS LICENSING AND DEVELOPMENT,

Plaintiff,

v.

HEWLETT PACKARD ENTERPRISE COMPANY,

Defendant.

Nos. 6:20-cv-00725-ADA  
6:20-cv-00726-ADA  
6:20-cv-00727-ADA  
6:20-cv-00728-ADA  
6:20-cv-00729-ADA  
6:20-cv-00730-ADA  
6:20-cv-00783-ADA

**BRAZOS'S NOTICE OF SUPPLEMENTAL AUTHORITY**  
**RELATING TO HPE'S MOTIONS TO DISMISS**

Brazos submits this Notice of Supplemental Authority in further opposition to HPE's motions to dismiss Brazos's First Amended Complaints (Case Nos. 6:20-cv-00725, Dkt. 25; 6:20-cv-00726, Dkt. 25; 6:20-cv-00727, Dkt. 25; 6:20-cv-00728, Dkt. 25; 6:20-cv-00729, Dkt. 25; 6:20-cv-00730, Dkt. 25; and 6:20-cv-00783, Dkt. 25). After the briefing on HPE's motions to dismiss was completed, this Court issued its decision in *USC IP Partnership, L.P. v. Facebook, Inc.*, Case 6:20-CV-00555-ADA, Dkt. 62 (W. D. Tex. Jul. 23, 2021). A copy of the *USC IP* decision is attached to this Notice as Exhibit A.

In *USC IP*, this Court considered, among other things, Facebook's Rule 12(b)(6) motion to dismiss indirect infringement claims for failure to allege pre-suit knowledge. Facebook contended that pre-suit knowledge is required to sustain a claim for indirect infringement, whether pre-suit or post-suit. *See* 6:20-CV-00555-ADA, Dkt. 9 at 1, 6-7. This Court disagreed. Although the plaintiff did not allege pre-suit knowledge, the Court granted Facebook's motion to dismiss only as the *pre-suit* portion of the indirect infringement claims, giving USC permission to add them back in after the start of fact discovery. *Id.*, Dkt. 62 at 4-5. This Court *denied*

Facebook’s motion to dismiss the post-suit indirect infringement claims, explaining: “[S]ince USC alleges that Facebook has knowledge of the asserted patent and the alleged infringement *at least at the commencement of this action*, the Court finds that USC has sufficiently alleged its post-suit indirect [] infringement claims.” *Id.* at 5 (emphasis added). Thus, this Court confirmed that alleging knowledge as of the commencement of the action is sufficient to state a claim for post-suit indirect infringement.

This Court’s *USC IP* decision supports denying HPE’s motions to dismiss Brazos’s indirect infringement claims for failure to allege pre-suit knowledge. Similar to in *USC IP*, Brazos’s first amended complaints allege knowledge “[a]s of the date of service of the initial complaint[s].” *See, e.g.*, Case 6:20-cv-00735, Dkt. 22 at ¶ 53. This is sufficient to state a claim for at least post-suit indirect infringement. HPE’s motion to dismiss Brazos’s post-suit indirect infringement claims should be denied.

Respectfully submitted,

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